

Message Text

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TAGS: ETRD, EGEN, BG

SUBJECT: TREATY OF FRIENDSHIP AND COMMERCE

REF: STATE 8561, DACCA 270

1. PROPOSED DRAFT TREATY HAS BEEN RECEIVED HERE BY POUCH AND BEEN REVIEWED BY MISSION. OUR COMMENTS FOLLOW.

2. ON FOLLOWING SECTIONS WE WOULD SUGGEST REVISIONS:

A. ARTICLE II, PARA 2-SUGGEST THAT LIST OF ACTIVITIES WHICH NATIONALS OF EITHER PARTY MAY ENGAGE IN BE ENLARGED BEYOND (A) TRADE AND (B) INVESTMENT, TO INCLUDE (C) APPROVED VOLUNTARY ACTIVITIES FOR RELIEF AND DEVELOPMENT PURPOSES. SIMILARLY, ARTICLE VI, PARA 7, MIGHT INCLUDE "DEVELOPMENTAL ACTIVITIES" ALONG WITH, AS RECORDED, "SCIENTIFIC, EDUCATIONAL, RELIGIOUS AND PHILANTHROPIC". ALSO ARTICLE VIII, PARA 1, MIGHT EXPAND THE REFERENCE TO "NATIONALS AND COMPANIES" TO INCLUDE "OR ASSOCIATIONS". RECOGNIZE THAT ARTICLE XV, PARA 3 DEFINES "COMPANIES" AS MEANING "CORPORATIONS, PARTNERSHIPS, COMPANIES AND OTHER ASSOCIATIONS" BUT GIVEN CONSIDERABLE ACTIVITY HERE OF VOLAGS AND PROSPECT OF CONTINUATION OF SUCH ACTIVITY, FEEL THAT INCLUSION OF SPECIFIC MENTION IN TEXT OF THE TREATY WOULD BE APPROPRIATE AND ADVANTAGEOUS.

B. ARTICLE IV-THIS ARTICLE IN PROPOSED TREATY DOES NOT HAVE PARAGRAPH SIMILAR TO PARA 2, ARTICLE IV IN TREATY OF 1959 WITH PAKISTAN. LATTER PROVIDED FOR NATIONAL TREATMENT IN APPLICATION OF COMPULSORY SYSTEMS OF SOCIAL SECURITY AND MAY HAVE BEEN LEFT OUT IN LIMITED OFFICIAL USE

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NEW DRAFT BECAUSE BANGLADESH AT PRESENT HAS NO SUCH SYSTEM COUNTRY-

WIDE. HOWEVER PROVIDENT AND OTHER FUNDS EXIST IN INDIVIDUAL ORGANIZATIONS AND NATIONAL SYSTEM COULD BE ESTABLISHED IN FUTURE. WE CAN SEE MERIT IN RETAINING LANGUAGE IN NEW TREATY.

C. ARTICLE VI, PARA 5-THIS PARA GIVES NATIONALS AND COMPANIES OF EITHER PARTY "RIGHT TO CONTINUED CONTROL AND MANAGEMENT OF THEIR ENTERPRISES WITHIN THE TERRITORIES OF THE OTHER PARTY" AND WOULD SEEM TO IGNORE THE EXTENSIVE NATIONALIZATION OF FOREIGN ASSETS HERE. WE THINK IT USELESS IN TREATY TO QUESTION NATIONALIZATION RIGHTS AND PROGRAMS IN BANGLADESH, AND WOULD ADD AFTER "RIGHT TO CONTINUED CONTROL" THE PHRASE "WITHIN APPLICABLE LAWS".

D. ARTICLE VII-THIS ARTICLE DOES NOT INCLUDE THE FOLLOWING PARA (2) FROM THE COMPARABLE ARTICLE (X) OF 1959 TREATY: "PARTIES UNDERTAKE TO COOPERATE IN FURTHERING INTERCHANGE AND USE OF SCIENTIFIC AND TECHNICAL KNOWLEDGE, PARTICULARLY IN THE INTERESTS OF INCREASING PRODUCTIVITY AND IMPROVING STANDARDS OF LIVING WITHIN THEIR RESPECTIVE TERRITORIES." THIS LANGUAGE WOULD APPEAR WORTH RETAINING IN ORDER TO ADVANCE CULTURAL EXCHANGE PROGRAMS.

E. ARTICLE IX-THIS ARTICLE ON BUSINESS ACTIVITIES MIGHT INCLUDE FURTHER PARA, NUMBERED 5, DUPLICATING LANGUAGE OF ARTICLE XIII OF 1959 TREATY. THIS PROVIDES FOR MFN TREATMENT OF COMMERCIAL TRAVELERS IN RESPECT TO CUSTOMS DUTIES AND REGULATIONS.

F. ARTICLE IX, PARA 3-THIS MAKES PROVISION FOR WITHDRAWAL OF FOREIGN EXCHANGE FOR VARIOUS PURPOSES INCLUDING "PAYMENTS FOR TECHNICAL SERVICES". WE WOULD ADD "PAYMENTS FOR HOME OFFICE SERVICES" TO COVER REMITTANCES WHICH AMERICAN INSURANCE COMPANIES MAKE TO THEIR HEADQUARTERS (IN PARTICULAR AMERICAN LIFE INSURANCE CORP. HERE).

G. ARTICLE X, PARA 1-EXTENDS MFN TREATMENT TO IMPORTS FROM TWO PARTIES. BECAUSE BANGLADESH IN FUTURE MAY BECOME IMPORTANT TRANSIT AREA FOR GOODS TRANSPORTED BETWEEN WEST BENGAL AND ASSAM AND BETWEEN CHITTAGONG PORT AND ASSAM/SUBSIDIARY TRIBAL STATES, SUPPORT MFN STATUS ALSO BE EXTENDED TO PRODUCTS OF TWO PARTIES BROUGHT IN FOR RE-EXPORTATION FROM OR IN TRANSIT THROUGH TERRITORIES OF PARTIES. INDEED BELIEVE WHOLE OF ARTICLE XIX OF 1959 TREATY ON FREEDOM OF TRANSIT SHOULD BE INCORPORATED IN NEW TREATY.

H. ARTICLE XI-THIS ARTICLE ON CUSTOMS REGULATIONS AND PROCEDURES DOES NOT INCLUDE FOLLOWING FROM PARA 2, ARTICLE XIV OF 1959 TREATY: "PENALTIES IMPOSED FOR INFRACTIONS OF CUSTOMS AND SHIPPING LAWS AND REGULATIONS SHALL BE MERELY NOMINAL IN CASES RESULTING FROM CLERICAL ERRORS OR WHEN GOOD FAITH CAN BE DEMONSTRATED." BELIEVE SUCH LANGUAGE SHOULD BE INCLUDED IN NEW TREATY.

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3. REST OF DRAFT TREATY LOOKS OKAY TO US. WE ANTICIPATE BDG RAISING OBJECTION TO LANGUAGE OF SOME OF SECTIONS, AS BELOW. DO NOT HOWEVER PROPOSE ANY CHANGES IN LANGUAGE EXCEPT PERHAPS LATER, FOR BARGAINING PURPOSES.

A. ARTICLE II, PARA 1 CALLS FOR FREE TRAVEL. BANGLADESH HAS A NUMBER OF SENSITIVE AREAS WHERE TRAVEL IS RESTRICTED, EVEN TO DIPLOMATS. BDG WILL PROBABLY WANT CHANGE IN LANGUAGE.

B. ARTICLE V, PARA 4 CALLS FOR JUST COMPENSATION FOR EXPROPRIATED PROPERTY IN EFFECTIVELY REALIZABLE FORM, REPRESENTING FULL EQUIVALENT OF PROPERTY TAKEN, AND DETERMINED AND MADE AT OR PRIOR TO TIME OF TAKING.

AS REPORTED IN DACCA A-1, 1/18/73, BANGLADESH CONSTITUTION ALLOWS EITHER NON-COMPENSATION OF EXPROPRIATED PROPERTY OR COMPENSATION. BANGLADESH NATIONALIZATION ORDER MARCH 1972 AND OTHER LAWS DO COMMIT BDG TO PROVIDE COMPENSATION, BUT NONE HAS SO FAR NOT BEEN GRANTED TO EITHER FOREIGN OR LOCAL OWNERS OF PROPERTY NATIONALIZED. FORMULATION OF A SPECIFIC POLICY ON COMPENSATION NOT YET COMPLETED. BDG FURTHERMORE WILL WANT TO SPIN OUT COMPENSATION PAYMENTS, GIVEN CRITICALLY LOW FOREIGN-EXCHANGE RESERVES. BDG THEREFORE CAN BE EXPECTED TO INSIST ON CONSIDERABLE LOOSENING OF LANGUAGE PARA 4 AS NOW WRITTEN.

C. ARTICLE VI, PARA 2 ALLOWS EACH PARTY TO RESERVE RIGHT TO LIMIT EXTENT TO WHICH ALIENS MAY ACQUIRE INTEREST IN LOCAL ENTERPRISES IN A NUMBER OF FIELDS (COMMUNICATIONS, TRANSPORT, BANKING, ETC). INDUSTRY AND TRADE NOT MENTIONED; YET HERE ALIEN OWNERSHIP HAS BEEN PARTICULARLY RESTRICTED IN BANGLADESH. BDG WILL CALL FOR EXTENSION OF LIST OF AREAS WHERE ALIEN INTEREST MAY BE RESTRICTED.

D. ARTICLE VIII, PARA 3 EXCLUDES COMPANIES FROM TAXES UPON INCOME ATTRIBUTABLE TO OPERATIONS OUTSIDE COUNTRY. BDG HAS MADE SOME EFFORT TO TAX SHIPPING-COMPANY EARNINGS ATTRIBUTABLE TO OPERATIONS OUTSIDE BANGLADESH AND MAY WANT THIS PARAGRAPH REVISED.

E. ARTICLE X, PARA 3(C) CALLS FOR A FAIR SHARE FOR IMPORTS OF US FOR EXAMPLE WHEN QUANTITATIVE RESTRICTIONS IMPOSED AND SPECIAL ALLOTMENT MADE TO A THIRD COUNTRY. BDG HAS CONTINUED PAKISTAN PRACTICE OF ATTEMPTING TO STANDARDIZE IMPORTS OF CERTAIN MECHANICAL EQUIPMENT SO THAT IMPORTS OF SPARE AND REPLACEMENT PARTS NEED NOT BE TOO EXTENSIVE. E.G., AT PRESENT ONLY CERTAIN JAPANESE-BRAND POWER TILLERS CAN BE IMPORTED. BDG WILL PROBABLY SEEK TO PRESERVE THIS PRACTICE AND NOT AGREE TO ALLOW FAIR SHARE TO IMPORTS FROM THE US.

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F. ARTICLE XII, PARA 1 CALLS FOR CONDUCT BY STATE ENTERPRISES/ AGENCIES IN BUSINESS IN ACCORDANCE WITH PURELY COMMERCIAL CONSIDERATIONS. FOR SOCIALIST COUNTRY LIKE BANGLADESH THIS WOULD APPEAR RATHER SWEEPING LIMITATION ON ACTIVITIES OF STATE TRADING BODIES PARTICULARLY THOSE INVOLVED IN BARTER TRADE WITH FELLOW SOCIALIST FOREIGN ENTITIES. BDG WILL PROBABLY WANT LANGUAGE CHANGED CONSIDERABLY.

G. ARTICLE XIII IN DRAFT ON FREEDOM OF COMMERCE AND NAVIGATION DID NOT EXIST IN 1959 TREATY. IF PROPOSED THEN, AND PAKISTAN DISINCLINED TO INCLUDE IT, BDG MAY REACT IN SIMILAR FASHION. EMBASSY BELIEVES PARAGRAPH DEFINITELY WORTH RETAINING.
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